

SAND CREEK PARTNERS, LTD, *et al.*,

Plaintiffs,

vs.

AMERICAN FEDERAL SAVINGS AND
LOAN ASSOCIATION OF COLORADO, *et*
al.,

Defendants.

**ORDER ACCEPTING REPORT &
RECOMMENDATION OF
MAGISTRATE JUDGE FERENBACH**

As discussed by Judge Ferenbach, Plaintiff has repeatedly refused to comply with orders of the Court. (R&R 2:18–21). Based on Plaintiff’s failures to comply, Judge Ferenbach recommends that the Court: (1) grant Cadle Company’s unopposed Motion to Find Plaintiff in Contempt of Court (ECF No. 44) (“Motion”); (2) order Plaintiff to comply with the Court’s April 15, 2015 Order (ECF No. 36) by producing documents in connection with Plaintiff’s judgment-debtor exam; (3) enter monetary sanctions against Plaintiff; and (4) issue a bench warrant for Plaintiff’s arrest. (*Id.* 3:19–21). Following entry of the R&R, Plaintiff filed a piecemeal Response to the Motion on September 30, 2015 (ECF No. 51), October 1, 2015 (ECF No. 52), and October 5, 2015 (ECF No. 54).

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1 United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
2 D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a de novo
3 determination of those portions of the Report to which objections are made. *Id.* The Court may
4 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
5 magistrate judge. 28 U.S.C. § 636(b)(1); D. Nev. R. IB 3-2(b).

6 In his Objection, Plaintiff admits his “refusal to respond to several inquiries,” but argues
7 that he “relied on advice of counsel in refusing to [produce certain documents]” as required by
8 the April 15, 2015 Order. (Pls.’ Obj. 3:21, 5:4–6, ECF No. 53). Further, Plaintiff states without
9 further explanation that he “is not in the position to pay [the \$1,105] sanction” pursuant to the
10 April 15, 2015 Order. (*Id.* 4:5–6). Finally, Plaintiff argues that between April 15 to September
11 29, 2015, “he was simply unable to file documents with the court’s PACER system.” (*Id.* 2:14–
12 15).

13 Although these arguments were not before Judge Ferenbach, they do not alter his
14 conclusion that Plaintiff is in contempt of court. *See Inst. of Cetacean Research v. Sea*
15 *Shepherd Conservation Soc’y*, 774 F.3d 935, 955 (9th Cir. 2014) (“A party’s good faith
16 reliance on the advice of counsel does not excuse the violation of a court’s order.”); *Gaskell v.*
17 *Weir*, 10 F.3d 626, 629 (9th Cir. 1993) (“[Defendant], as the sanctioned party, had the burden
18 to produce probative evidence of his inability to pay the sanctions.”). Moreover, Plaintiff has
19 had the opportunity to cure his contempt since September 15, 2015, when the R&R was
20 entered, but has failed to do so. Therefore, upon reviewing the matters underlying the R&R de
21 novo, the Court agrees with Judge Ferenbach’s finding that Plaintiff’s continued refusal to
22 comply with the Court’s orders by failing to produce documents and reasserting objections
23 previously overruled “constitutes contempt of court.” (R&R 3:9–10). Thus, the Court will
24 adopt Judge Ferenbach’s R&R.

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1 **IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 48) is
2 **ACCEPTED and ADOPTED.**

3 **IT IS FURTHER ORDERED** that Cadle Company's Motion to Find Larry Bortles in
4 Contempt of Court (ECF No. 44) is **GRANTED.**

5 **IT IS FURTHER ORDERED** that Plaintiff must comply with the Court's Order of
6 April 15, 2015 (ECF No. 36).

7 **IT IS FURTHER ORDERED** that Plaintiff shall reimburse Cadle Company the sum of
8 \$2,786.50 as its expenses, including attorneys' fees, incurred to identify and present to the
9 Court evidence of Plaintiff's violation of the Court's orders.

10 **IT IS FURTHER ORDERED** that a bench warrant shall be issued against Plaintiff to
11 compel his compliance with this Order and shall remain outstanding for so long as Plaintiff
12 does not fully cure his contempt.

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15 **DATED** this 2 day of February, 2016.

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19 Gloria M. Navarro, Chief Judge
20 United States District Court
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